

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Telecommunications)
Act of 1996)
)
Amendment of Rules Governing Procedures)
To Be Followed When Formal Complaints)
Are Filed Against Common Carriers)

CC Docket No. 96-238

COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys, hereby submits its comments in response to the Commission's Public Notice in the above-captioned proceeding seeking comment on an accelerated docket for formal complaint proceedings.² PCIA commends the Commission for exploring and considering processes that can help to expedite Commission resolution of formal complaints. PCIA believes that a hearing-type of proceeding,

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² FCC Public Notice, *Common Carrier Bureau Seeks Comment Regarding Accelerated Docket for Complaint Proceedings*, DA 97-2178 (rel. Dec. 12, 1997) ("Public Notice").

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conducted under a shortened schedule, can play an important role in promoting the development of robust competition as contemplated by the Telecommunications Act of 1996. Such proceedings, as outlined in the *Public Notice*, should still result in “speedy, consistent and fair adjudication of complaints.”³ Given the significance of some issues likely to be addressed in formal complaint proceedings before the Commission to its wireless membership, PCIA endorses the Commission’s adoption of an accelerated docket that will both permit prompt resolution of direct disputes between specific parties and provide timely guidance to members of the telecommunications industry.⁴

Item 1. Need for Accelerated Docket. While the Commission has recently adopted rules to ensure the timely resolution of all formal complaint proceedings,⁵ expedited trial-type procedures can play an important role in helping to achieve the Commission’s competitive objectives. Over the past two years, the Commission has been engaged in a number of rulemakings to implement the Telecommunications Act of 1996 as well as other Commission policies. Members of the telecommunications industry are now seeking to apply relatively new rules and policies in the provision of service to the public and in their dealings with other telecommunications carriers. There undoubtedly will be a number of disagreements about the proper interpretation and application of the Commission’s recent rules and policies as carriers attempt to apply those determinations to real life business arrangements.

³ *Public Notice* at 2.

⁴ As requested by the *Public Notice*, PCIA has organized its comments under the number paragraph headings as set out in the *Public Notice*. *Id.* at 6.

⁵ *Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers*, FCC 97-396 (rel. Nov. 25, 1997) (Report & Order).

For example, PCIA anticipates that there will be disputes involving the nature of interconnection and related compensation obligations between commercial mobile radio service (“CMRS”) providers and local exchange carriers (“LECs”). PCIA is aware that at least three formal complaints related to interconnection issues already have been filed with the Commission. Given the significance of interconnection arrangements to the competitiveness of wireless carriers, the availability of accelerated docket proceedings can assist in helping to promptly resolve disagreements between wireless operators and LECs, and perhaps do so in a fashion that provides guidance to other industry participants to permit them to resolve disagreements without resort to formal complaint filings. Clearly, the accelerated docket option should be made available for formal complaints involving interconnection issues between CMRS operators and LECs.

The *Public Notice* asks whether the accelerated docket “should be limited to issues of competition in the provision of telecommunications services.”⁶ PCIA does not believe such a limitation is warranted. In particular, almost all formal complaints arguably implicate competitive issues, and the Commission might well find itself engaged in litigation over whether a particular dispute related to “competition” or not. Rather, since it appears the Commission is contemplating assigning cases on an individual basis for processing on an accelerated basis,⁷ the Commission should consider all formal complaint filings eligible for inclusion on the accelerated docket, subject to compliance with applicable requirements and selection by the Commission staff.

⁶ *Public Notice* at 3.

⁷ *See id.* at 5.

Item 3. Discovery. In FCC formal complaint proceedings, the production of documents – whether with a party’s initial filings or subsequently during discovery – is very important to resolution of the issues. PCIA concurs with the Commission’s assessment that, under the accelerated docket proposals, “discovery must be as targeted and focused as possible.”⁸ At the same time, the Commission should ensure that expedition of the complaint proceedings does not undermine the ability of the parties to ensure that all relevant documents are produced on a timely basis.

Item 4. Pre-Filing Procedures. PCIA endorses the Commission’s plan for deciding which cases are processed under the accelerated docket standards. Specifically, either party to a formal complaint should be entitled to request expedited, trial-type proceedings. The Commission, acting through the Common Carrier Bureau and/or the Competition Enforcement Task Force, can evaluate the case to determine whether it is appropriate for inclusion on the accelerated docket. Factors that might be considered by the Commission in making this determination could include the novelty of the issues raised by the formal complaint; whether resolution of a particular case will help provide guidance to other members of the industry; the competitive implications of the action alleged in the formal complaint; whether delay in resolving the formal complaint may render significant harm to the complaining carrier or to the quality of competition; and the potential impact on carrier customers.

Item 8. Other Issues. As the Commission recognizes, assigning a formal complaint case to the accelerated docket will require an increased level of cooperation and diligence on the part of the parties to the formal complaint. Obviously, a recalcitrant litigant could attempt to

⁸ *Id.* at 4.

stonewall expedited consideration of the issues involved in a complaint assigned to the accelerated docket. Accordingly, the Commission must be prepared to impose sanctions and to take other appropriate actions to ensure that its attempts to resolve a formal complaint proceeding on an expedited basis are not thwarted.

While PCIA concurs in the need for the Commission to adopt rules and procedures that would apply only to accelerated docket cases, in order to adapt the formal complaint rules to the expedited time frame and the trial-type hearing, PCIA also urges the Commission to retain some flexibility in the rules ultimately adopted to achieve that goal. Such flexibility would allow the Commission to take into account factors unique to the particular complaint at issue as well as to accommodate special circumstances to ensure that the processing is fully consistent with the underlying legal and policy objectives. In addition, building into the rules some flexibility at this time will allow the Commission greater ability to adapt its accelerated docket procedures to the information it gleans from the first proceedings handled under the new policies. This would permit the Commission more readily to make minor improvements in its formal complaint and accelerated docket rules without undue delay.

Accordingly, for the reasons stated above, PCIA endorses the Commission's efforts to establish expedited, trial-type procedures to be applied to formal complaint proceedings. Rules governing such procedures adopted consistent with the considerations discussed above will assist the Commission in its efforts to achieve its policy objectives and promote implementation of the goals of the Telecommunications Act of 1996.

Respectfully submitted,

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